

ORDER NO. 4570

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;  
Tony Hammond, Vice Chairman;  
Mark Acton; and  
Nanci E. Langley

Competitive Product Prices  
International Business Reply Service Competitive  
Contract 3 (MC2011-21)  
Negotiated Service Agreements

Docket No. CP2018-193

ORDER APPROVING ADDITIONAL  
INTERNATIONAL BUSINESS REPLY SERVICE COMPETITIVE CONTRACT 3  
NEGOTIATED SERVICE AGREEMENT

(Issued April 9, 2018)

I. INTRODUCTION

The Postal Service seeks to include an additional International Business Reply Service Competitive Contract 3 (IBRS 3) agreement (Agreement) within the IBRS 3 product.<sup>1</sup> For the reasons discussed below, the Commission approves the Postal Service's request.

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<sup>1</sup> Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, March 29, 2018 (Notice).

## II. BACKGROUND

Agreements included within the International Business Reply Service (IBRS) Competitive Contract 3 product permit U.S.-based businesses selling lightweight articles in foreign countries to offer their customers a convenient method of returning the articles to the U.S. for recycling, refurbishment, repair, or other value-added processing. The businesses supply postage-prepaid IBRS packaging to their foreign customers to return the used or defective articles. Pursuant to an IBRS Competitive Contract 3 agreement, the businesses pay the Postal Service a negotiated price for each returned article.

On March 29, 2018, in accordance with 39 C.F.R. § 3015.5, the Postal Service filed its Notice, along with supporting documents. In the Notice, the Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement for the IBRS 3 product and requests that the Agreement be added to the existing IBRS 3 product. Notice at 3. Among the supporting documents, the Postal Service included a copy of the Governors' Decision authorizing the IBRS 3 product, the Agreement proposed to be added to the product, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. *Id.* Attachment 4.

The Postal Service will determine the effective date of the Agreement after the Commission completes its review. Notice at 3. The Agreement will expire two years after the effective date. *Id.*

On March 30, 2018, the Commission issued a notice establishing the instant docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>2</sup>

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<sup>2</sup> Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, March 30, 2018.

### III. COMMENTS

The Public Representative filed comments on April 4, 2018.<sup>3</sup> No other comments were received. Based upon a review of the Postal Service's filing, including the information filed under seal with the Commission, the Public Representative concludes that the Agreement is functionally identical to the baseline agreement and should generate sufficient revenue to cover its costs. PR Comments at 2. He notes that the differences between the Agreement and the baseline agreement do not fundamentally alter the services provided. *Id.* at 3.

### IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the Agreement: (1) is functionally equivalent to the baseline agreement established for the IBRS 3 product; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3015.5 and 3015.7).

*Functional equivalence.* In Order No. 684, the Commission added IBRS Competitive Contract 3 to the competitive product list and designated an agreement as the baseline agreement for assessing the functional equivalence of agreements proposed for inclusion within the IBRS Competitive Contract 3 product.<sup>4</sup>

The Postal Service asserts that its filing demonstrates that the Agreement is functionally equivalent to the baseline agreement, and requests that the Agreement be included within the IBRS 3 product. Notice at 3. It asserts that the Agreement fits within the Mail Classification Schedule language for the IBRS 3 product. *Id.* at 3-4. The Postal Service also asserts that the Agreement and the baseline agreement possess similar cost and market characteristics and the same functional terms but states that

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<sup>3</sup> Public Representative Comments on Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, April 4, 2018 (PR Comments).

<sup>4</sup> See Docket Nos. MC2011-21 and CP2011-59, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 28, 2011, at 6 (Order No. 684).

prices may differ. *Id.* at 5. The Postal Service identifies numerous differences between the Agreement and the baseline agreement but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.<sup>5</sup>

The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline agreement; meets the pricing formula and falls within the classification established in the Governors' Decision authorizing this product; and comports with 39 U.S.C. § 3633 and applicable Commission rules. It also has considered the Public Representative's comments. The Commission concludes that the Agreement is substantially similar to the baseline agreement and that the differences between them do not fundamentally alter either the service the Postal Service will provide under the Agreement or the structure of the Agreement. The Commission therefore finds that the Agreement may be included within the IBRS 3 product.

*Cost considerations.* The Commission reviews each competitive product to ensure that it covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by a product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the Agreement should cover its attributable costs. The addition of the Agreement to the IBRS 3 product will not cause

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<sup>5</sup> Differences include, among others, revisions to existing articles and the inclusion of new articles. *Id.* at 5-6.

cost coverage for the product to fall below 100 percent because, as the Commission found in the FY 2017 Annual Compliance Determination (ACD), the product as a whole covers its attributable costs.<sup>6</sup> Consequently, the Commission finds that the addition of the Agreement to the IBRS 3 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2). Because it finds that the addition of the Agreement to the IBRS 3 product should allow the product to cover its attributable costs, the Commission finds that the addition of the Agreement to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the addition of the Agreement to the IBRS 3 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates it is consistent with section 3633(a). The Commission will review the Agreement's cost coverage, the cost coverage of the IBRS 3 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the ACD to ensure that they continue to comply with 39 U.S.C. § 3633(a).

*Rate changes.* The Agreement, like previous IBRS competitive agreements, includes clauses addressing cost increases and contingent pricing that allow the Postal Service flexibility to change rates without entering into a new agreement. The Commission addressed the implications of contingency pricing clauses in Order No. 178 and concluded that the Postal Service must file notice of rate changes occurring under such clauses pursuant to 39 C.F.R. § 3015.5 and provide a minimum of 15 days' notice.<sup>7</sup>

*Other considerations.* The Postal Service will determine the effective date of the Agreement after the Commission completes its review. Notice at 3. The Postal Service

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<sup>6</sup> Docket No. ACR2017, Annual Compliance Determination, March 29, 2018, at 78, 89-91.

<sup>7</sup> Docket Nos. MC2009-14 and CP2009-20, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, February 5, 2009, at 10 (Order No. 178).

shall promptly notify the Commission of the effective date of the Agreement. The Agreement will expire two years after the effective date. *Id.*

If the Agreement is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

#### V. ORDERING PARAGRAPHS

*It is ordered:*

1. The Agreement filed in Docket No. CP2018-193 is included within the International Business Reply Service Competitive Contract 3 (MC2011-21) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective immediately.
2. The Postal Service shall promptly notify the Commission of the effective date of the Agreement.
3. The Postal Service shall promptly file notice of the Agreement's termination with the Commission in this docket if the Agreement is terminated prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble  
Secretary

## CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

### **Part B—Competitive Products**

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#### **2500                    Negotiated Service Agreements**

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#### **2515                    Inbound International**

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#### **2515.3                International Business Reply Service (IBRS) Competitive Contracts**

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#### **2515.3.5            Products Included in Group (Agreements)**

Each product is followed by a list of agreements included within that product.

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- International Business Reply Service Competitive Contract 3

##### *Baseline Reference*

Docket Nos. MC2011-21 and CP2011-59

PRC Order No. 684

##### *Included Agreements*

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CP2018-193, expires TBD

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